

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CHRISTOPHER BOFFOLI,
an individual,

Plaintiff,

v.

NETWORK DATA CENTER HOST, INC., a
California Corporation; and DOES 1-5,
inclusive.

Defendants.

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

CHRISTOPHER BOFFOLI, (“Boffoli” or “Plaintiff”) hereby alleges for his complaint against NETWORK DATA CENTER HOST, INC. (“NDC Host”) upon personal information as to Plaintiff’s own activities, and upon information and belief as to the activities of others, as follows:

I. NATURE OF THE CASE

1. This is a claim for copyright infringement arising under the copyright laws of the United States, Title 17 of the United States Code.

II. JURISDICTION AND VENUE

2. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over NDC Host because it conducts substantial business in the State of Washington.

4. The claims alleged in this Complaint arise in the State of Washington and the Western District of Washington and elsewhere.

5. Venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1-3).

III. PARTIES

6. Plaintiff is an individual and resident of the Western District of Washington.

7. NDC Host is a California corporation with its headquarters and principal business address at 1009 Calle Sombra, San Clemente, CA 92673.

8. Plaintiff doesn't know the true names of defendants named in this complaint as Does 1 through 5 and therefore sues those defendants by such fictitious names. Plaintiff will amend the complaint to include the true names of the Doe Defendants and allege facts supporting their liability when Plaintiff learns them through discovery. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible in some manner for the acts and omissions that give rise to Plaintiff's injuries, and that the Doe Defendants proximately caused Plaintiff's injuries.

IV. FACTS

A. Boffoli created copyrightable photographs and registered them with the U.S. Copyright Office.

9. Boffoli is a James Beard-award nominated art photographer who created “Big Appetites”, a series of art photographs featuring miniature figures in whimsical poses on fruit. Big Appetites has been featured in numerous magazines, newspapers, television, and other media, including the Washington Post, Der Spiegel in Germany, Oprah.com, NBC and ABC television series, the Telegraph, Daily Mail and Sun in the United Kingdom, the Telegraph in Australia, and The Nation in Pakistan, along with tens of others.

10. Boffoli's business is based on licensing and selling photographs he creates. Big Appetites photographs are currently available for purchase at four fine art galleries located in New York, Seattle, London, and Monaco. Big Appetites photographs can also be purchased over the Internet, including through Boffoli's website. Boffoli has licensed use of Big Appetites photographs to greeting card companies, calendars, and others.

11. Boffoli registered each photograph in the Big Appetites series with the U.S. Copyright Office and has Copyright Registration No. VAu001106484 (June 13, 2011).

B. NDC Host's customer posts photographs from Big Appetites without license or permission from Boffoli on webpages housed on NDC Host's servers.

12. NDC Host, an Internet-based company, is a web host that allows customers to make their website accessible via the World Wide Web. NDC Host provides its customers with space on servers, as well as Internet connectivity through its data center.

13. NDC Host provides services to a Doe Defendant and allows that Doe Defendant to house its website content on NDC Host's servers. On information and belief, NDC Host also provides Internet connectivity to this Doe Defendant, which enables the Doe Defendant to make its website accessible to Internet users at <http://wackymania.com/photos-of-miniature-life-going-on-planet-food/> (the "Infringing Website").

14. The Infringing Website contains numerous photographs from Big Appetites without license or permission from Boffoli, as illustrated by Exhibit A. The Infringing Website is hosted on NDC Host's servers.

C. NDC Host failed to prevent the Infringing Website from being assessable over the Internet despite notice from Boffoli.

15. On information and belief, NDC Host can remove the content from its servers, including the Infringing Website which is hosted on NDC Host's servers. NDC Host can also disable the Doe Defendant's ability to post content to the Internet.

16. NDC Host has not registered an agent with the United States Copyright Office for receipt of Digital Millenium Copyright Act ("DMCA") notices.

17. NDC Host directs individuals with complaints about the use of NDC Host's services to contact the company at "abuse@ndchost.com."

18. On February 8, 2014, Boffoli sent a notice to NDC Host's abuse@ndchost.com email address notifying NDC Host of the infringement by Wacky Mania on the Infringing Website. NDC Host responded by email that it received Boffoli's notice. Boffoli's notice and NDC Host's response are attached as Exhibit B.

19. Boffoli never authorized his work to be posted on the Infringing Website.

20. NDC Host has not removed or disabled access to the Infringing Website.

**V. CAUSE OF ACTION
COPYRIGHT INFRINGEMENT AND CONTRIBUTORY COPYRIGHT
INFRINGEMENT**

21. Boffoli hereby incorporates Paragraphs 1-19 by reference.

22. Boffoli is, and at all relevant times has been, the owner of the copyright in the photographs in the Big Appetites series.

23. Each photograph in Big Appetites is copyrightable subject matter under 17 U.S.C. § 102(a)(5).

24. Boffoli has complied in all respects with the provisions of the Copyright Act and all regulations thereunder.

25. Boffoli registered the copyright in each photograph in Big Appetites with the United States Copyright Office.

26. Boffoli has the exclusive rights under 17 U.S.C. § 106 to (1) reproduce the photographs in Big Appetites, (2) prepare derivative works based on Big Appetites, (3) distribute copies of Big Appetites, and (4) display Big Appetites publicly.

27. Without the permission or consent of Boffoli, photographs from Big Appetites were reproduced, derivative works were made from, copies were distributed of, and the photographs were displayed on the Infringing Website, which is hosted on NDC Host's servers.

28. Boffoli's exclusive rights in the photographs in Big Appetites were violated.

29. NDC Host induced, caused, or materially contributed to the Infringing Website's publication.

30. NDC Host had actual knowledge of the Infringing Website. Boffoli provided notice to NDC Host in compliance with the DMCA, and NDC Host failed to expeditiously disable access to or remove the Infringing Website.

31. NDC Host acted willfully.

32. Alternatively, NDC Host directly infringed Boffoli's copyrights by continuing to allow public access to the Infringing Website on NDC Host's servers.

VI. RELIEF REQUESTED

WHEREFORE, Boffoli asks this Court to enter judgment against NDC Host and NDC Host's subsidiaries, affiliates, agents, employees, and all persons acting in concert or participation with them, granting the following relief:

1. Temporary and permanent injunctions preventing and restraining infringement of Big Appetites by NDC Host under 17 U.S.C. § 502;

2. An order requiring the destruction of all copies made by or under the control of NDC Host of the photographs in Big Appetites and all articles by which such copies may be reproduced under 17 U.S.C. § 503;

3. An award of the actual damages suffered by Boffoli as the result of NDC Host's infringement plus the profits of NDC Host attributable to the infringement under 17 U.S.C. § 504(b);

4. Alternatively, if Boffoli so elects, an award of statutory damages for each infringement of Big Appetites under 17 U.S.C. § 504;

5. A judgment that NDC Host's infringement was willful and an increased statutory damage award under 17 U.S.C. § 504(c)(2);


6. An award of Plaintiff's full costs including a reasonable attorney's fee under 17 U.S.C. § 505; and

7. For such other and further relief as may be just and proper under the circumstances.

1 Dated this 18th day of March, 2014.

2
3 Respectfully Submitted,

4 **NEWMAN DU WORS LLP**

5
6 By: 
7 Keith Scully, WSBA No. 28677

8 Attorneys for Plaintiff

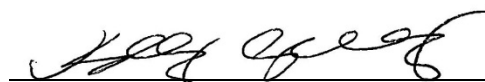
9 **CHRISTOPHER BOFFOLI**

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11
12
13 **JURY DEMAND**

14 Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by
15 jury of all issues presented in this complaint which are triable by jury.

16
17 Dated this 18th day of March, 2014.

18
19
20 Respectfully Submitted,
21 **NEWMAN DU WORS LLP**

22 By: 
23 Keith Scully, WSBA No. 28677

24 Attorneys for Plaintiff

25 **CHRISTOPHER BOFFOLI**

Exhibit A

Wacky Mania



Photos of Miniature Life Going on Planet Food

Signup

We Recommend You to See:



This Is Where People Live



Why Did She Do That?

Recent Stories from Wacky Mania

[Mirrors of Memories](#)

[Unbelievably – Illegal Mountain Villa Atop 26-Story Building](#)

[Famous Beauties in the Black and White Photos](#)

[Amazing Realistic Paintings by Darren Baker](#)

[10 Design Revival of Everyday Items](#)

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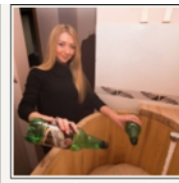
ShareThis



[Check out more awesome videos »](#)

Using tiny model figures and food, Seattle-based artist Christopher Boffoli creates fantastic scenes that mimic everyday life! His collection, titled Disparity, is shown in galleries all across the United States. His collection is remarkable and shown the variety of scenes using toys and action figures, ranging from epic battles to car washes and swimming pools. You can enjoy combine action figures and figurines with food to create miniaturized worlds.





Beer Bath For Real Men



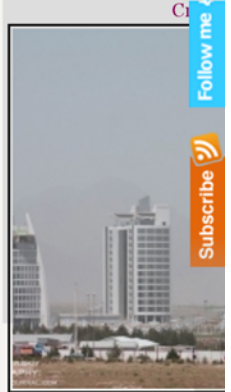
Russian Antarctic Station



IL 76T: Civil Modification



Alien Constructions In the Moscow Region?



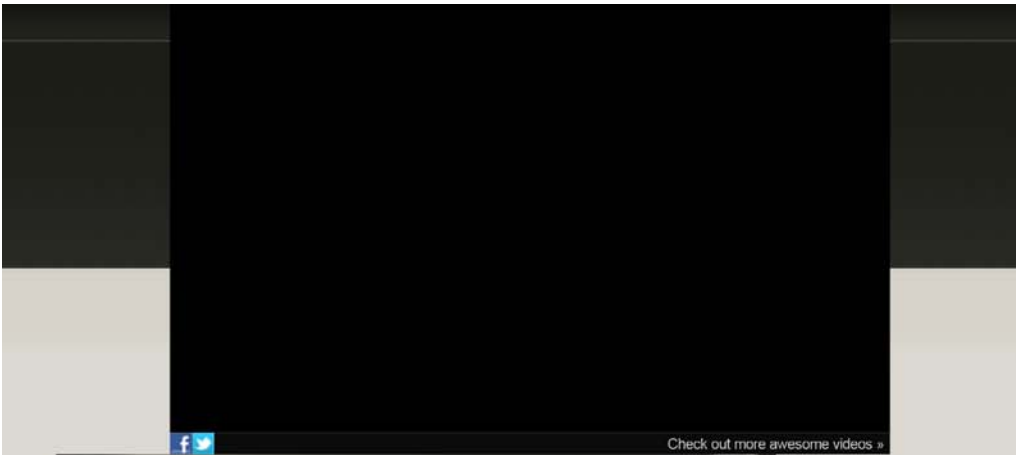
Ashgabat: New Life



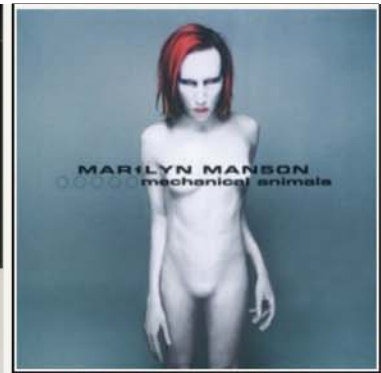
Russian Girls in Crazy



Abandoned Bank Vault Store



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Marilyn Manson to Blame for Columbine? No Way!



Toy Russia



The Squalor and Sadism That Shaped Osama's Sons




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Sexy Santa Poop Himself



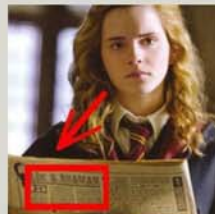
Tattoo Artist Lost His Job After This



Tantalizing Tiffany Toth



Nobody Could Spot These Details Back In The 90's



Cameraman Really Showed These Details But No One Noticed...



25 Things You Should Never Do On A Bike



Really Cool and Creative Ads



Celebrating Victory Day In Ukraine



Intriguing Journey To Kerch And Its Landmarks



So Similar, But So Different

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Exhibit B

From: Christopher Boffoli <cjboffoli@gmail.com>
Date: Sat, Feb 8, 2014 at 3:48 PM
Subject: Notice of Copyright Infringement
To: abuse@ndchost.com

By e-mail

Hello. I am the author and copyright holder of a series of fine art images called "Big Appetites" which features tiny figures photographed on food landscapes. United States copyright registrations VAu1106484 & VAu001148370. Examples of the work can be seen online here:

<http://www.bigappetites.net>

My intellectual property has been posted to a website named "Wackymania.com" which is apparently hosted on your servers at 208.71.173.108. This post was done without permission, in violation of international law. I would like you to please remove or otherwise disable access to this link as soon as is reasonably possible:

<http://wackymania.com/photos-of-miniature-life-going-on-planet-food/>

I hereby state that I have a good faith belief that the disputed use of the copyrighted material or reference or link to such material is not authorized by the copyright owner (myself), my agents, or the law (e.g., as fair use). I hereby state the information in this Notice is accurate and, under penalty of perjury, that I am the owner of the copyright or of an exclusive right under the copyright that is allegedly infringed.

Sincerely,

Christopher Boffoli

Christopher Boffoli

4508 41st Ave SW

Seattle, Washington 98116-4221

USA

206.552.9797

From: Network Data Center Host, Inc. <support@ndchost.com>
Date: Sat, Feb 8, 2014 at 3:48 PM
Subject: Welcome to Network Data Center Host, Inc. helpdesk
To: cjboffoli@gmail.com

This email is confirmation that you are now registered at our helpdesk.

Registered email: cjboffoli@gmail.com
Password: jh0b91cyn7

You can visit the helpdesk to browse articles and contact us at any time: <https://helpdesk.ndchost.com/>

Thank you for registering!

Network Data Center Host, Inc.

Helpdesk: <https://helpdesk.ndchost.com/index.php?>